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305 NLRB No 4

D--2304  
Milwaukee, WI

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KLEEN TEST PRODUCTS, A DIVISION  
OF MERIDIAN INDUSTRIES, INC.

and

Case 30--CA--11361

MIDWEST REGION, AMALGAMATED CLOTHING  
& TEXTILE WORKERS UNION, AFL--CIO, CLC

*September 30, 1991*

DECISION AND ORDER

*By Members Levaney, Orvath, and Raudabaugh*  
On May 29, 1991, the General Counsel of the National Labor Relations

Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 30--RC--5009. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On August 5, 1991, the General Counsel filed a Motion for Summary Judgment. On August 12, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

In its amended answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification in the representation proceeding. Respondent denies that the information requested is relevant and necessary, but does so on the basis that the Union was erroneously certified by the Board.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

## Findings of Fact

## I. Jurisdiction

The Respondent, Kleen Test Products, a Division of Meridian Industries, Inc., a corporation with an office and place of business located in Brown Deer, Wisconsin, has been engaged in the business, inter alia, of packaging fabric softener sheets. In the course and conduct of these business operations, Respondent, during the 12-month period ending May 29, 1991, sold and shipped goods and materials valued in excess of \$50,000 to customers located outside the State of Wisconsin. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the

Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

### A. The Certification

Following the election held March 23, 1991, the Union was certified on April 9, 1991,<sup>1</sup> as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production, maintenance, and warehouse employees, employed by the Employer at its Brown Deer, Wisconsin plant; excluding office clerical employees, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since April 12, 1991, the Union has requested the Respondent to bargain and to furnish information, and, since May 8, 1991, the Respondent has refused. We find that these refusals constitute an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### Conclusions of Law

By refusing on and after May 8, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

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<sup>1</sup> The April 9, 1991 Supplemental Decison and Certification of Representative was corrected on June 12, 1991. Member Raudabaugh did not participate in the representation proceeding.

## Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Kleen Test Products, A Division of Meridian Industries, Inc., Brown Deer, Wisconsin, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Midwest Region, Amalgamated Clothing & Textile Workers Union, AFL--CIO--CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production, maintenance, and warehouse employees, employed by the Employer at its Brown Deer, Wisconsin plant; excluding office clerical employees, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Brown Deer, Wisconsin, copies of the attached notice marked "'Appendix.'"<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 30 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1991

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Dennis M. Devaney, Member

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Clifford R. Oviatt, Jr., Member

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John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Midwest Region, Amalgamated Clothing & Textile Workers Union, AFL--CIO, CLC as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production, maintenance, and warehouse employees, employed by the Employer at its Brown Deer, Wisconsin plant; excluding office clerical employees, quality control employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

KLEEN TEST PRODUCTS, A DIVISION  
OF MERIDIAN INDUSTRIES, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-2211, Telephone 414--291--3866.